MARCH-APRIL 1952

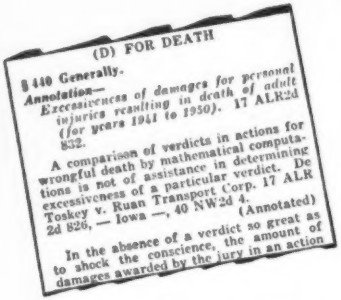
Case and Comment

The Lawyers' Magazine—Established 1894

IN THIS ISSUE

Volume 57 No. 2

IS IT EASY TO FIND?



(D) FOR DEATH

§ 440 Generally.

Annotation—

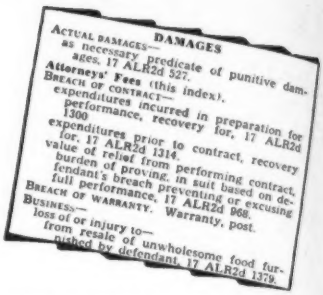
Excessiveness of damages for personal injuries resulting in death of adult (for years 1941 to 1950). 17 ALR2d 832.

A comparison of verdicts in actions for wrongful death by mathematical computations is not of assistance in determining excessiveness of a particular verdict. De Toskey v. Ruan Transport Corp. 17 ALR 2d 826, — Iowa —, 40 NW2d 4.

(Annotated)

In the absence of a verdict so great as to shock the conscience, the amount of damages awarded by the jury in an action

FROM THE DIGEST TO ALR 2d



DAMAGES

ACTUAL DAMAGES—
as necessary predicate of punitive damages, 17 ALR2d 527.

Attorneys' Fees (this index).

BREACH OF CONTRACT—
expenditures incurred in preparation for performance, recovery for, 17 ALR2d 1300
expenditures prior to contract, recovery for, 17 ALR2d 1314.
value of relief from performing contract, burden of proving, in suit based on defendant's breach preventing or excusing full performance, 17 ALR2d 968.

BREACH OF WARRANTY. Warranty, post.

BUSINESS—
loss of or injury to—
from resale of unwholesome food furnished by defendant, 17 ALR2d 1379.

FROM THE WORD INDEX TO ALR 2d

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The Lawyer and Public Relations

By VIRGIL L. RANKIN
Professor of Public Relations, Boston University

Reprinted from The Bar Bulletin of the Boston Bar Association, November, 1951

THE new profession of public relations has much to learn from the older, long-established legal profession. The lawyer's profession has been shaped for him by generations of able men who were jealous of its integrity. The structure they built is somewhat rococo but it is still somewhat magnificent. It inspires respect. The public relations profession can start afresh, without the influence of powdered wigs and Latin gibberish, but it will do well to note the foundations of the modern bar—in particular, the educational requirements which must be met by all who seek admission to the profession; the code of ethics adapted to professional activities and policed by the profession itself; the professional organization strong enough to engender group loyalties, control admissions, and assume general responsibility for the mutual interests of all members.

On the other side of the shield, it may be said with equal validity that the content of public relations applicable to relations between the public and the bar cannot be too fully engaged in the service of the legal profession.

Other professions—notably, medicine, engineering—have proved during recent years the efficacy of public relations in their behalf.

Lawyers have done some pretty good "merchandising" for their product. They have surrounded the specialized service they render with an aura of dignity and authority that draws clients. But this very formalism has sometimes produced negative results as well—among clients and in the public mind. Many people believe, for instance, that legal services are a luxury, available only to the rich and powerful, or that the lawyer is a rope's-end functionary like the priest and undertaker to be called upon only in times of calamity. These, and many other public misconceptions about legal services, are public relations problems for lawyers collectively, properly dealt with by and through their associations. Among other problems requiring group action are those with which you are acquainted, but about which there seems to be very little done. It was Supreme Court Justice Jackson who said that the legal profession was losing a lot of business because it was not keeping pace with modern demands for prompt and

practical function. The delays and obstacles in the way of obtaining speedy judicial determination of a disputed point certainly encourage businessmen many times to make their own settlements.

Then too, much public suspicion of the law may stem from the uncertainties and lack of uniformity in its interpretation and application. Public confidence is not created when it is known, for example, that a man can be divorced under the laws of Nevada, married to his former wife under the laws of North Carolina, and be a bigamist under the laws of New York at the same time. Or that a will executed in one State under perfectly legal conditions may be invalid, for purely technical reasons, in another State. In other words, some of the habits and common practices of the law have created a negative impression more vivid than the positive impressions that flow from the ideals and traditions of the profession. These I cite as a layman's examples of public relations problems calling for collective action.

There are other significant problem areas, however, where the individual lawyer must act in behalf of the profession of which he is a part.

In a famous case decided by the Supreme Court of the United States in 1913 (Munn v. Illinois, 94 U.S. 113, 24 L ed 77), it was emphasized that when one becomes a member of a society he necessarily parts with some privileges which, as an unrestricted individual, not affected by his relations to others, he might retain. This is the very essence of freedom under government, as it has come down to us from the Codes of Justinian and Napoleon and the Common Law of England. With the grant of every right there is imposed a corresponding duty or "obligatio," as Oliver Wendell Holmes reminded us. Upon admission to the bar and acceptance of the right to practice law every practitioner must accept the corresponding duty to his profession—"to demean himself as an attorney, according to the best of his learning and ability, and with all good fidelity, as well to the court as to the client . . ." No profession can rise above the level of those of which it is composed.

The lawyer who forgets his balancing duty to his profession creates one of the more serious public relations problems. Within the community in which the lawyer lives and is known he is the profession. As his conduct is judged so will be judged the profession of which he is a part. If he is a reckless driver and flaunts traffic regulations, can his neighbors be expected to respect the profession he represents? If he uses his influence to fix minor infractions of the law, thus circumscribing proscribed legal procedure, can he criticize the popular radio portrayal of the "crooked mouthpiece"?

Just recently there was published a popular handbook for writers. Its 1300-plus pages of adjectives are arranged under certain "key" words

Under the key-word "Lawyer" there are listed 30 adjectives of which more than half are far from pleasing or complimentary to the profession. For example: crooked, shyster, tricky, rascally, conceited, supercilious, and the like. Under another key-word, "Doctor," there appear a like number of adjectives, but with this marked difference: the latter classification lists only one adjective that the medical profession would find objectionable. It would appear that in this instance, at least, the doctor enjoys better public relations than does the lawyer.

Nor does the lawyer fare much better in the numerous stage, movie, and radio characterizations of his profession.

Such interpretations of the legal profession could not long endure unless there was at least a modicum of acceptance in the public mind of the fitness of such portrayals. The bar associations can do little toward correcting this problem except to stimulate their members to conduct themselves—twenty-four hours a day, in and out of court—as responsible members of an honorable, worthy, dignified, ethical profession. This, then, is a public relations problem that the individual member of the legal profession can, and must, resolve.

Good public relations is so simple, so easily acquired, so inexpensive and so downright sensible that it should be a well-defined part of every lawyer's personal program. There's nothing mysterious nor complicated about it. There are no mystical, occult forces to manipulate or understand. The lawyer is practicing public relations—good or bad—in every act of his waking life, private or professional. And he can no more escape the consequences of his actions than he can stem the tide.

Everything he does, everything he says, contributes to the mosaic that is somebody's opinion about him. If his actions and his utterances are such as to command respect and liking, then it may be said that his public relations are good. If his deeds and words, on the other hand, are such as to make people lose respect for him, dislike and misunderstand him, then his public relations are bad. It's just as simple as that. The public relations of the legal profession is the sum total of the public relations of the individuals who make up that profession.

Altogether too often we find people who regard public relations as the creation of favorable news through the public press, radio and other media of mass communication. This is a deceptively narrow interpretation of the subject. This concept stems from the belief that public attention is public relations. Press agentry more accurately describes that. As a matter of fact, public attention itself is not necessarily good public relations and is often fraught with risk. It is easy to attract public attention and forfeit public respect. The fellow who proclaimed that "I don't care what people say about me just as long as they keep talking about me," was enamored with press agentry, but he knew little about public relations and such philosophy is definitely bad business.

One doesn't buy public relations by the pound, case or sack. It isn't a commodity that can be purchased with an appropriation or an assessment. It isn't

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even a responsibility that we can delegate to an individual, a committee, or even to a bar association. The point is that public relations for the legal profession is essentially a matter of personal conduct of those individuals who make up the profession. You, the lawyer, are your brother's keeper in that his repute, as a member of the bar, is in your hands as well as his own.

The great English lawyer, Lord Moulton, outlined three areas of human conduct: (1) The area of complete freedom. (2) The area of legal regulation. (3) The area of good manners. Good public relations is the difference between complete freedom, which is chaos, and complete legal regulation, which we certainly hope to avoid. Good manners—with all those words connote—are good public relations.

The legal profession is inherently

one which strongly merits and should have public approval. It has much of which to be proud and comparatively little to be ashamed of. Few activities police their own ranks and suppress their own offenders as does the legal profession. Only a few others dedicate themselves under oath to high ideals and action as you do. Yet there is no short cut; no easy, effortless way to good public relations. The bar associations may speak for you but they cannot act for you. They may help you but they cannot substitute for you. The responsibility for good public relations is an individual one . . . YOURS.

Labor Liens

"A labor or materialman's lien must be grounded on express or implied contract. It can't be fastened on one like you would buckle a collar on a bird dog or paste a tag on an express package that is being forwarded to a friend."—*Terrell, J., in Lee v. Sas* (1951) — Fla —, 53 So2d 114, at p. 116.

Don't Lose Your Head

Prof. Jones of the Columbia Law School tells of the peerless Mississippi orator who carried his client's case on personal injuries caused by a negligently manufactured Coca Cola bottle all the way to the U. S. Supreme Court. Although counsel insisted a constitutional question was involved, most observers agreed the case reached the highest tribunal simply because the judges wanted to see the eloquent lawyer in action.

The much-publicized advocate lived up to all his advance notices by poking a long finger at the bench and beginning, "I come to you like John the Baptist, crying: 'Repent ye, repent ye!' "

This was even more than Justice Holmes had bargained for, and he interrupted the orator to ask, "Does counsel for the plaintiff know what happened to John the Baptist?"

This was calculated to make the man from Mississippi crawl behind his brief case. However, without blinking an eyelash the lawyer struck back: "Why, yes, your honor, he was beheaded at the request of a harlot . . . but I always thought this court was above such temptation."—*Columbia Law School News.*

The Right to a Public Trial

by HAROLD SHAPIRO
Editor-In-Chief, Illinois Law Review

Reprinted from the Journal of Criminal Law and Criminology, March-April, 1951

INFORMED commentators do not agree as to when and why the right to a public trial was first developed. This disagreement is probably due to the great age of the right and to the fact that it has long been taken for granted.

Blackstone observed that public examination of witnesses was a common feature of Roman law in Hadrian's time. However, it was no longer common on the European continent when Blackstone wrote, and only England gave its citizens the right to a public trial. Evidently it was a common law right because neither the Magna Carta, the Bill of Rights of 1621, nor the Bill of Rights of 1689 made any mention of it. There was a right to a public trial, however, existing as early as the middle of the 17th Century and Hale as well as Blackstone noted its presence. The best explanation as to its growth was probably made by Bishop, who ascribes its development to "immemorial usage".

Why the right to a public trial was included among our Constitutional guarantees is apparently unknown. Various commentators and the courts have thought that its inclusion within the Sixth Amendment was to prevent any American counterpart of the Star Chamber, the Spanish Inquisition, or the French *Lettres-de-cache*. Whatever the reason might have been for including the right within the Bill of Rights, it was never discussed during the course of debate on the Sixth Amendment. It is Radin's opinon that the guarantee was included because of dutiful translation of the common law into the Bill of Rights. There is no evidence to the contrary.

The obscure origin of the right, however, does not detract from its vitality, and lack of a public trial has often been the reason for upsetting trial court verdicts. But why is the right necessary? The courts and the commentators explain its necessity along two broad lines: (a) as a defendant's right and (b) as a right of the public. Those who call it the right of the defendant support their position in several ways. One of the first explanations given was that the presence of the public at the trial made it more difficult for a witness to lie. This was because of the public scorn that would be heaped upon the perjurer and, sec-

ondly, because of the possibility that the court room contained someone who could refute a lie, should one be told. Along the same lines, the presence of the community has been felt to have a healthy effect on the judge, the jury, and officers of the court, preventing any arbitrary action on their part. On a similar tack is the rationale that an unknown witness might be brought forward by publicity of the trial.

The second explanation of the right to a public trial—the public's right—has been divided into three parts. First, it has been said that the public has the right to observe the activities of the government, including the judicial processes. Again, the courts have said that those who may be in the same position as the defendant have a right to see and hear how the defendant fares. Further, there is ". . . the educative value which is implicit in punishment."

While a public trial may well be said to improve the quality of testimony by reducing, to some extent, the tendency of a witness to lie, it is also true that spectators in the courtroom may have an adverse effect on the testimony. Thus the public's presence has often forced witnesses into frightened or embarrassed silence. The witness has been known to refuse to testify before the uncleared court from fear of personal harm. Occasionally, in statutory rape cases the embarrassed prosecutrix will not testify at all unless the court room is cleared.

While it can hardly be doubted that the presence of the public usually has a beneficial effect on the judicial process, it would be surprising if, on the other hand, the judge, the jury, and the officers of the court were not influenced by a common, strong prejudice of the courtroom spectators. Cheers, applause, and other demonstrations of approval or disapproval have often prejudiced defendants' rights. Even unexpressed spectator hostility to the defendant has been the basis of reversible error when the mob has come into close contact with the jury. It is apparent that the public's presence sometimes actually prevents the just administration of the law.

The many recognized exceptions to the right to a public trial conflict with the explanation of the right in terms of the unknown witness. The underage spectator can be excluded by the judge in cases involving salacious testimony; yet there can be no assurance that the excluded minor cannot give pertinent evidence. Rowdies and hysterics may be excluded by the court for disturbing orderly trial procedures; but cannot these same individuals be

potential unknown witnesses? There can be no assurance that one who is excluded from the courtroom for any one of a number of valid reasons does not possess vital testimony—yet it would seem that reviewing courts have never reversed a conviction because of such an exclusion from fear that the unknown witness had been prevented from testifying. Perhaps this is because the courts recognize the fact that the possibility of pertinent testimony, either in chief or rebuttal, coming from the courtroom audience is a meager one. Adequate trial publicity can be and has been effected by the newspapers of the neighborhood, all of which can be represented by a few reporters.

It is difficult to understand how the defendant would be injured by clearing the courtroom if the right to a public trial belongs solely to the public. Can the defendant complain that the public has been foreclosed from exercising its right? He is certainly not injured because the public cannot watch as justice is being dispensed. Nor is he injured because similar defendants will not know how to plan their defenses. And he will undoubtedly receive the ". . . full educative value implicit . . ." in his own punishment without the help of the courtroom audience. It may be that the public's interest in the right to trial publicity can be stated in a different manner. It would seem that the public has an interest in maintaining a certain standard of fairness in the general administration of justice which can be separated from each defendant's right to a fair trial. One way of assuring this standard of fairness may be by permitting the public to attend criminal trials. But (conceding for the moment that it is solely a public right) whether its importance warrants enforcement at the expense of allowing a defendant to invoke a right in which he has no interest to overturn an otherwise valid judgment is an open question.

Public trials, as we have seen, are sometimes prejudicial to the defendant, almost never bring forth pertinent testimony from the unknown witness, and may be largely a right of the public which should not be invoked by the defendant. These factors, of course, do not demonstrate that the right of public trial is never of substantial importance to the defendant. They do suggest, however, that the rights should not be applied in rigid and inflexible terms, but rather in such a way as to advance the interests of the public and the defendant in the particular circumstances of each case.

The public has an interest in keeping what it considers the impressionable segment of the population insulated from salacious testimony. On review, the only question will be, was the exclusion only so wide as to protect that portion of the population. The public also has an interest in the orderly administration of justice. To that end hysterics and rowdies may be

removed from the courtroom and the defendant will not be heard to complain unless the exclusion was broader than necessary. In a large number of jurisdictions, the factors of a speedy and orderly trial are regarded as so outweighing the defendant's right to a public trial as to completely eliminate the necessity for considering the breadth of the exclusion. The only consideration relevant in such a jurisdiction is whether there was *any* kind of public trial.

The circumstances of a case may be such that the defendant's interest cannot be protected unless the public is barred from the courtroom. He is entitled to a fair trial and if this fairness can be achieved only through the exclusion of all or part of the spectators, the right to a public trial must be suspended in order to meet the requirements of due process.

Today's judicial administration has two features which, to some degree, alleviate the necessity for trial publicity—an adequate record of trial court proceedings and appellate facilities for correcting errors below. Any abuses clear enough to be obvious to the courtroom audience are not likely to escape the reviewing court. Further, it would seem that today's trial judge is more influenced in reaching a proper decision by the immediate approval or disapproval of the reviewing court than by the supposed public interest in such a judgment.

It must therefore be granted that the public's presence is not the only factor in preventing arbitrary judicial action. But we cannot conclude from this that the right to a public trial is valueless. It would be impossible to estimate the worth of the influence wielded by the public on the jury, the officers of the court, and even the review-minded judge. It would be foolhardy—because its worth is inestimable—to suggest that the right is without substance.

Correction in Article "Duties in Filing Decedent's Returns" in November-December 1951 Issue

WE REGRET that an error was made in the article "Duties in Filing Decedent's Returns," by Mr. Knox Farrand, in the November-December, 1951 issue of Case and Comment. The next to last paragraph, on page 59, should read (as it correctly read in the condensation in The Monthly Digest of Tax Articles) as follows:

"However, once one basis or the other has been chosen, it may not thereafter be changed without the permission of the Commissioner. The time for filing the return is on or before *the 15th day of April following the close of the calendar year,* or on or before the 15th day of the fourth month following the close of the fiscal year, as the case may be."

Indian Justice

by

IRVING and MARVEL SHORE*

A CALIFORNIA lawyer traveling in India finds himself quite at home when he visits the courts—even more so than in the halls of justice in London which mothered both the American and Indian legal traditions. Such is our conclusion after a two-month study in what Kipling calls "The Sub-Continent."

In the first place, the Indian advocate does not suffer from the schizophrenic division between barrister and solicitor which characterizes the English system. Except in Bombay and Calcutta, the same individual who prepares the case will conduct the trial and appeal. Bombay and Calcutta retain the "split personality" theory that the client gets better (but concededly more expensive) service when the barrister is relieved of such preliminaries as interviewing clients and witnesses—and collecting fees. But even in these two conservative jurisdictions, the classical separation of activities is under legislative attack and is expected by most pleaders to be abolished within the near future.

Startling it is to the Californian—who boasts that his State was first to codify its laws, even before New York—to learn that India's codes date back to 1860. Nearly a century ago, Englishmen (who even today struggle along without codes) introduced the criminal, civil, procedural and evidence codes in Madras.

Under British rule there were inadequate facilities for training lawyers in India, and barristers (those eligible to plead in the highest courts) customarily received their training at one of the famous Inns of Court at London. Today law schools are everywhere part of universities, and as in America, an aspirant gains admission to practice after a three-year law course, for which a bachelor's degree is generally prerequisite.

In every major Indian city all law courts, both trial and appellate, are located in one building, with the legal profession concentrating its offices nearby within a block or two. Indeed, the oldest British legal centers of Madras, Calcutta, and Bombay each has a magnificient castle-like structure in which are housed the offices of the sheriff, the prosecuting attorneys, the law library, all trial and appellate

*Mr. and Mrs. Shore, both members of the San Francisco, California Bar, are on a study-tour of the Middle East.

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courts—and what is extraordinarily convenient, a large room with many tables, desks and chairs in which a lawyer can consult clients and witnesses or study his case if time precludes his returning to his office. Further, he is not expected to remain in the courtroom awaiting the calling of his case; a page will summon him when his motion or appearance is next up.

Indian lawyers wear robes like their British colleagues—but not wigs. We were told that a robe is not so warm as, but more comfortable than, the conventional business suit worn by Americans—and in addition does not require as much fresh linen.

Counsel do not sit "in line" facing the bench, as in California, but at opposite ends of a table that is shaped like a half-moon, so that they can at the same time see each other, the court, and the spectators. There is no witness chair, but as in the English and continental courts, testimony is given while standing in a "box" or railing which is higher than the level of the floor but below that of the judges.

Basic law is the same as in the United States and in England—on crimes, torts, corporations, evidence and procedure—with this important difference: the lucrative divorce field is denied the Indian practitioner. The British recognized the Hindu and Moslem religious law as governing persons belonging to either "community" (that is, adherents of either faith). Although some fifteen or so years ago the provincial statutes began to make provision for civil divorce, so strong are the traditions against it that, we were told, there have been not more than half a dozen actions brought in the entire Presidency of Madras (a population of more than 40 millions) since the courts were granted jurisdiction over divorce and separate maintenance.

Indian provinces generally have "integrated" the bar in the American fashion: membership is compulsory, and the association supervises the training and examination of candidates as well as the discipline of licensees—all under the control of the courts.

Interestingly, the chief justice of the supreme court in each province has from the beginning held the administrative authority which has only recently been given him by the legislatures in some American States—power to assign judges of the lower courts from one county or venue to another as their services are needed, and responsibility for making recommendations for appointments to vacancies either on his own or on lower benches. In a sense, then, the chief justice represents the executive branch of the government.

And when a judge reaches the age of 60 retirement is compulsory, or if he has 30 years of service before attaining that age, it is optional, at half salary. He cannot engage in private practice after retirement—it is considered an unfair use of his prestige and personal influence on his colleagues—but he must be available for special duties as required, frequently an arbitrator of labor disputes.

The "small claims court" system as we know it in some parts of the United States (no attorney for either side, skeleton pleadings, and a special informal procedure in claims not exceeding $100) is unknown in India. On the other hand, the local magistrate whose jurisdiction corresponds to our "justice of the peace" has authority to adjudicate matters up to 5,000 rupees in Madras (the amount varies in each province)—which means about $1,250 in American money. Considering the purchasing power and standard of living, this is equivalent to giving the local "J.P." (who is usually a respected elder of the community but not a lawyer) authority to decide a contest involving $25,000. Since lawyers do not generally appear in the local courts, the first reaction was that this was too loose a system to be just—every American lawyer once in a while encounters the officious, despotic, non-legally trained magistrate whose curbstone justice is tempered only by his fear of criticism from higher authority.

We were assured, however, that Indian lawyers do not covet the business of representing litigants in the magistrate's tribunals because the fees (set by the court) are too small. Further, the attorneys themselves respect the judicial fairness and integrity even of the non-lawyers among the magistrates, saying that knowledge of the local traditions and the characters of the litigants outweigh lack of formal legal training.

An example of what the Indian lawyers believe to be equitable, cited more than once, concerns money-lending transactions which, in fact usurious, are frequently disguised by writing the contract for a higher amount than the borrower actually receives. When suit is brought in the magistrate's courts to enforce such a contract, the custom is for the judge to ascertain the exact amount of the loan, compute the legitimate interest, and to suggest to the lender that he voluntarily accept that amount in full payment rather than have the decision go against him—and it is equally the tradition for both sides amicably to accept the suggested compromise—all without benefit of counsel!

Full-time public defenders, as in some large American cities, are not needed; court-appointed counsel represent indigent prisoners but are reimbursed for their time from public funds.

A judge ordinarily holds his position for life. Trial by jury is restricted to the more serious criminal offenses corresponding to our felonies, and otherwise, in all civil and in lesser criminal matters, two judges decide both the facts and the law. If they disagree, a third judge is called in to review the testimony and to cast the determining ballot. Disagreements between two judges are so rare, we were told, that the time of the third judge would be wasted in the vast majority of cases were the panel to consist of three members. Appellate tribunals, however, are larger—three, four, or five

judges are usual—sometimes more, if the chief justice deems the case sufficiently important.

Although women have been admitted to practice law for a number of years, except as referees of juvenile courts and as local magistrates, none has as yet attained the bench.

What happened to the Englishmen who practiced law and held high judicial office in India before "Independence" in September of 1947? A few "die-hards" on the bench disdainfully retired on commuted pensions, and some others since reached retirement age, but a substantial minority of the higher tribunals (perhaps a quarter) are veteran English civil servant-judges who are somewhat gracefully "sitting out" their remaining years until they shall be replaced by Indians. English lawyers, however, have almost everywhere found themselves unwelcome and have abandoned their practices—a few remain in Calcutta and Bombay, but even in these cosmopolitan centers litigants prefer native counselors. "The British long ago learned that an Indian lawyer could serve them better in court," explained the chief prosecutor of Madras, "while our business employed Englishmen to represent them in the mistaken belief that the favoritism would be in their favor. But now neither an Indian nor a European thinks that he gains anything by having an Englishman as his advocate."

With the adoption by India of a national Constitution modelled directly after that of the United States, judges and lawyers everywhere expressed the belief that American precedents would now be commonly cited, especially on constitutional questions involving civil liberties and separation of powers—these are subjects upon which British decisions cannot be considered as pertinent as those of the U. S. Supreme Court.

It is therefore more than a personal tribute to Dean Roscoe Pound of the Harvard and University of California (Hastings) law schools that he has been invited to be the Tagore lecturer in law at the University of Calcutta during the academic year 1952–53. As the first American scholar in his field to teach in India, it is expected that Dean Pound will initiate a relationship which will in time "reorientate" Indian jurisprudence from the English system to that which has evolved in the United States during the 175 years since we, too, separated from the "Mother Country."

Bright Constellation

". . . Freedom of religion, freedom of the press; freedom of person under protection of habeas corpus; and trial by juries impartially selected, these principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation.

—*Thomas Jefferson.*

Streamline Your Case

by JOHN ALAN APPLEMAN
of the Chicago Bar

Reprinted from the Chicago Bar Record, November, 1950

WITH increasing frequency in recent years, I have been called in by young lawyers to try cases for them, or to assist them over anticipated rough spots. While this has usually meant occupancy of the front chair, it has permitted observation of these lawyers at work. From such observations and other observations of younger lawyers in the courtroom, it has become apparent that they, by and large, have one great fault in common. They "overtry" their cases.

This attitude is easily understood. In the first place, they are desperately afraid of omitting some essential element of proof and so cover again and again certain matters of evidence. In addition, the question of burden of proof has been overstressed. To the young lawyer, this means a greater number of witnesses, and he places witness after witness upon the stand to testify many times over as to similar matters, disregarding the strength or weakness of such testimony, the personality and demeanor of the witness, and his relationship to the parties.

The net effect is that while the young lawyer is busily making a one-day trial last a week, at the same time he is losing the lawsuit. Nor are the reasons difficult to understand. One need go back only to the fundamental nature of any lawsuit to understand why the overtried case is frequently lost.

The trial of a jury case is an applied demonstration in sales technique. The jury is a composite customer; the opposing attorneys are salesmen representing competing products to be sold. The verdict is the sales order which each salesman tries to secure.

Assume that instead of selling a lawsuit one is selling stockings. If the product looks sturdy, durable, attractive and is reasonably priced, the customer will probably buy. Suppose, however, the salesman extols at length the history of the manufacturer, the technique in forming the heel, the chemical processes involved in making nylon, and ad infinitum. After the first ten minutes, the customer is yawning; in another ten, he hands the salesman his hat.

This does not mean that a lawsuit can be tried in ten minutes. A composite product takes longer to display.

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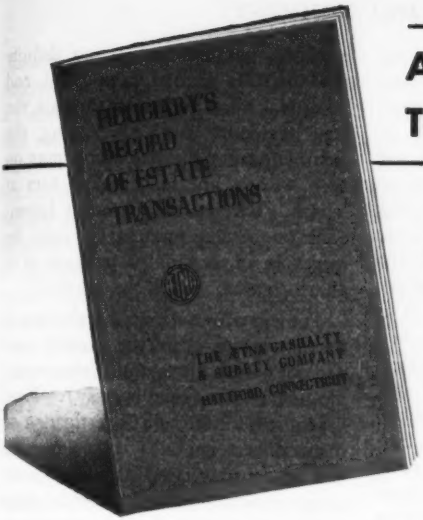

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But the illustration does point out that the minute interest wanes and boredom commences, the danger point has arrived. In addition, there is another psychological factor of the greatest importance. The American is naturally argumentative. Sitting as a juror, he prides himself upon impartiality. When a witness or the attorney makes a statement which is obviously incorrect, or which is at odds with the great weight of the evidence, the juror immediately answers such statement in his own mind and, because such answer is his own conclusion, it remains almost unshakable. Further, when the opposing counsel takes such weak witness apart upon cross-examination or points out the error in closing argument, the juror admires his perspicacity (so closely resembling the juror's) and tends to go along with the attorney upon other maters.

The lawyer who chooses to pile up an abundance of ill selected testimony encounters several hazards: (1) Boring the jury, which loses interest in his case; (2) having the jury itself draw conclusions adverse to such testimony; (3) exposing a weak witness to devastating cross-examination; (4) exposing of weaknesses for use by opposing counsel in closing argument; (5) confusing the issues and leaving an impression of a loose, sprawly case with many loopholes.

Thus we find many attorneys subpoenaing every witness from the vicinity of an automobile accident, irrespective of such witness's knowledge. The attorney, because he has no definite plan or sales campaign in mind, and because he has failed to separate the weak evidence from the strong, the pertinent from the irrelevant, puts on each witness and interrogates him at length. Because the witness's knowledge on certain matters is vague, he leaves an impression of haziness as to all matters to which he alludes.

The cure for such trial technique is much simpler than the Keeley cure and not half so distasteful (information gleaned purely from hearsay). First, it requires a thorough investigation of the case, personal talks to the witnesses, and an accurate conclusion as to what impression such person will make upon the witness stand. In this connection, one should always put down factors which will militate against the weight of testimony—such as relationship to a party, occupancy of the same automobile, long friendship or common employment, obvious bias or hostility to an opposing party or counsel, conviction of an infamous crime, poor reputations, and other factors. A competent attorney upon the other side will elicit such matters in such a way as to do the utmost damage. Thus, while such witnesses frequently must be called, their testimony should be restrained within as narrow limits as possible to minimize damage from cross-examination, with principal reliance placed upon disinterested eye witnesses, where possible.

Taking a typical automobile case, a husband and wife are injured. The

husband is a carpenter, solid, not well educated but direct and pleasant in his answers. The wife has peroxide hair and overpaints, is flippant in her answers and you cannot prevail upon her to change her appearance or mannerisms prior to trial. There was one occupant of the car who was asleep at the time of the accident. A filling station attendant saw the entire occurrence, and is solid in his testimony. Prior to the time the cars were moved from the position in which they stopped, some twenty people including one policeman, a tow car driver, and two ambulance drivers saw that position and some marks of damage and debris. The ambulance drivers have no present recollection of anything; the tow car driver is fairly good; the policeman has refreshed his recollection from his report and is definite in his testimony; four of the other witnesses are quite strong, but the others are definitely confused upon various details. Of these four subsequent witnesses one has a reputation of being a chronic drunkard and another is a professional prostitute who looks the part. Now, given this problem, how do you proceed?

The filling station attendant, as a disinterested third person, should be the first witness. His story should be detailed, in chronological order, and in his own words without being led by the attorney. The jury will be thoroughly intent upon his testimony. Next should come the police officer, who gives a tinge of official approval to your side of the case. He should be asked only three or four questions, merely sufficient to bring out the precise limits of his knowledge. Then the tow car driver, the two witnesses exclusive of the drunkard and chippy, and then the garagemen who repaired both vehicles to fix the places of damage upon each car. If counsel had photographs admitted upon stipulation, these should first be shown to the filling station attendant, then to succeeding witnesses; if there was no stipulation, they should be shown to those witnesses with a promise to connect, and then the photographer should be put on the witness stand.

Next should come the passenger. He must be handled graciously. "Mr. Smith, did you see this accident?" "No, Mr. Peterson, I'm sorry but I was asleep at the time." "Thank you, Mr. Smith, that's all." If you had not produced him, opposing counsel would have blasted you directly and by innuendo. Now the jury is impressed with your fairness in not trying to force an occupant to help with perjured testimony.

Next should come the hospital records, with a promise to connect. Then the wife, whose testimony you have been dreading. You lead her with a firm hand, not by leading questions but by confining her to the issues, concentrating primarily upon injuries. Then the husband, to remove an unfavorable psychological reaction produced by the wife and to cover all aspects of the case in detail. The jury is again thoroughly interested in his

testimony. With this interest completely alive, I prefer to put on my doctor last, to drive home the injuries, read the X-rays, and emphasize such permanency as may have resulted.

In short, then, you have removed almost all witnesses whose testimony could be shaken or who would leave an unfavorable impression upon the jury. The jury has remained interested and then turns to the defense counsel with the attitude, "Okay, bub, we're convinced. You're going to have a tough job changing our minds."

Defense counsel, of course, must organize and present his case similarly. He must first have struck hard upon cross-examination of the plaintiff's witnesses, to bring out any possible discrepancy or weakness. In presenting affirmative evidence, he usually leads off with his strongest witness. If the

defendant looks reasonably honest, perhaps he should be examined first, leaving the jury somewhat shaken but with the attitude, "Well, it sounds reasonable, but—we still need to be convinced." Then should come a strong disinterested witness to produce the jury feeling, "By golly, maybe that is true!" This witness should be followed by other more minute testimony, closing with a strong witness.

This presupposes an accident case, but all cases are tried along the same general lines. A good trial is like a modern short story—the reportorial style, it is called. Short paragraphs, terse sentences, direct, forceful—excess verbiage and glowing phrases deleted. Fast moving, full of punch, it drives home its point with conviction. That is what is meant by streamlining your case.

The Conversion of Bobbed Hair

It was of the time many years ago when women spent long hours winding their long tresses about their heads. Some women had to substitute switches so that they might adorn their heads in proper style. A prominent, dignified and wealthy storekeeper was operating a beauty parlor in one department of his large store. The beauticians were advocating a new style of cutting women's hair by bobbing it.

A certain woman of this story, which is truer than fiction, permitted the beautician in this store to cut her hair. She had it cut for the sake of its health. The beautician promised to make the hair which had been cut from her head into "bobs." The lady would not be embarrassed by having her friends know that she had cut off her hair. She remained hidden a few days while the "bobs" supposedly were being made.

When the lady called for her "bobs" she was told that her hair was lost. The loss was so tragic she employed a young attorney. He considered replevin an inadequate remedy. A suit for damages for the tort of conversion was his choice. Common Law Pleadings had been his triumph in his recent law school education. He pleaded well the necessary allegations.

The keeper of the store demanded to know from the old family lawyer why he was being sued. The old lawyer read to him the pleading containing the charges against him. The ancestry of the young lawyer who had prepared the document was publicized in tones which could be heard far away.

Fate is sometimes kind to a young lawyer. He was in his office when the old lawyer phoned to him. He was warned that he should remain hidden until the old lawyer could confer again with the storekeeper and make an explanation of the meaning of this malicious charge. The warning upon the telephone was in substance, "when I read to him your allegation, that he had converted this human hair to his own use, he, being bald, started for your office with the assertion that he was going to tear you apart. I couldn't get another word of any kind to him."

The hair was found in due time. It was made into "bobs." The case was withdrawn. Peace and harmony reigned.

Contributor: Oscar A. Drake
Kearney, Neb.

AMERICAN BAR ASSOCIATION SECTION

The publishers of Case and Comment donate this space to the American Bar Association to permit it to bring to our readers matters which the Association deems to be of interest and practical help to the general practitioner.

THE A. B. A. MID-WINTER MEETING

THE Mid-Winter Meeting of the A.B.A., the semi-annual business meeting of the nation's entire legal profession, was held at the Edgewater Beach Hotel in Chicago in late February. It was prefaced by gatherings of key policy groups and of many committees and sections of the Association, which met several days in advance of the meeting proper.

One of the many matters which loomed large on the crowded agenda of the preliminary meetings of the Board of Governors of the A.B.A. was a series of conferences between the three Judge Advocates General of the Armed Forces, President Barkdull, and the chairmen of the A.B.A. groups who are concerned with command control in military justice, the status of lawyers in the Armed Forces, and legal assistance to the Armed Forces, etc. These conferences were directed toward possible reconciliation of such differences as exist between these Departments of Government and the A.B.A.

The dominant theme of this year's Mid-Winter Meeting was long range planning for the future needs of the A.B.A., the profession, and the public for a national law center. The Board of Governors sat jointly with the A.B.A. Committees on Special Gifts, on Ways and Means, on Rules and Calendar, on Headquarters Building, and with the Directors of the A.B.A. Endowment to consider a plan for a new Headquarters Building to be supplemented, as soon as possible, by adequate research facilities, a library of law and of collected and collated bar association materials, facilities for the preparation and publication of a law review based on the standpoint of the matured practicing lawyer and of a lawyer's national weekly bulletin, and providing headquarters and meeting space for the A.B.A. working groups and for affiliated organizations.

This inspiring conception of the "topless towers of Ilium" challenges the imagination and idealism of every lawyer who sees the plan from its modest beginning to its future development. Hardheaded men with a lifetime in the profession are beginning to ask themselves what they can give back to a profession that has provided them with the deep personal happiness

derived from an intellectual pursuit in the public service coupled with its decent remuneration commensurate with their efforts.

Concurrently with that joint meeting, a National Conference of Lawyer Referral Services concentrated on plans for the realization of a large part of the second of the six long range objectives of the A.B.A., "The promotion and establishment within the legal profession of organized facilities for the furnishing of legal services to all citizens at a cost within their means." This was co-sponsored by the A.B.A. Committees on Public Relations and Legal Aid and the J.B.C. Committee on Legal Aid and Lawyer Referral Services. This Conference enabled existing referral services to compare organizational plans and procedures leading to their improvement and standardization. It also encouraged bar associations to spread this type of service to fulfill the lawyer's duty to serve those less well able to pay for legal services, so that our whole population will be well served by the profession.

The plans for the future of the Lawyer Referral Service are more fully set

Certification of Legal Instruments

Certification of legal instruments by attorneys has recently received the sanction of the Board of Trustees of the Denver, Colorado, Bar Association, according to a recent issue of that organization's publication "Dicta". This action was taken in order to discourage the preparation of such documents by laymen, encourage careful draftsmanship and make authorship apparent on the face of the instrument for future consultation or correction.

The board recommended that this certification be done by means of a stamp reading: "I certify that I drafted
this instrument.
. . . . . .
Attorney at Law"

The association took this step only after consultation with other bar groups which have adopted the practice, and after securing a favorable opinion from the American Bar Association's Committee on Professional Ethics and Grievances. It is contemplated primarily that such certification be placed on deeds, trust deeds, releases, mortgages, notes, contracts of sale and other instruments dealing with the transfer of real estate. However, it is also recommended for wills, contracts and all other legal documents which an attorney may prepare for his client. In cases of complicated contracts, which may be the product of two or more attorneys, there would be no necessity for its use, nor should an attorney feel required to use it in any situation where he believes that its use may be a disservice to his client.

If used extensively by the attorneys of the state in connection with conveyancing, however, it could be a very important first step in helping to prevent the preparation of such documents by real estate brokers and others.

forth in the January, 1952, *A.B.A. Journal* at page 30, and more on this subject will appear in the editorial pages of succeeding issues of the *Journal*.

On Sunday, February 24th, the Conference of Bar Association Presidents met all day for discussions of what successful and progressive bar associations are doing and how they do it. A very popular guest was George Roberts, the chairman of the A.B.A. Committee on Retirement Benefits for Lawyers, who addressed the Presidents on the current status of his Committee and of his coordinating committee of representative organizations of self-employed persons sponsoring legislative enactment of the principle that would permit self-employed persons to exclude reasonable amounts each year from their taxable income and invest it in their chosen pension trusts for retirement or death benefits, to be taxed as withdrawn. This A.B.A. project has captured the intense concern of a large proportion of the tax-paying public which has become aware of inequitable tax treatment.

At this 1952 Mid-Winter Meeting the House of Delegates, as a representative legislative body, after much discussion and debate, made final and policy-determining disposition of all these and many other problems, proposals and efforts. Details of their decisions will be reported later.

Who works harder than lawyers?

A Good Formula

A professor of law said to his students: "When you're fighting a case, if you have the facts on your side, hammer them into the jury, and if you have the law on your side, hammer it into the judge."

"But if you have neither the facts nor the law?" asked one listener.

"Then," answered the prof, "hammer the table."

W. Somerset Maugham,
A Writer's Notebook (Doubleday).

Gray v. Halsbury

According to the LAW NOTES (Eng.) February, 1950, "The Hardwicke Society recently held a debate on the motion:—'That this house would rather have written Gray's Elegy than Halsbury's Laws of England.' Lord Reading, who spoke in favour of the motion, said that the Elegy was elevated by genius; Halsbury was cast down by an infinite capacity for taking pains. Though much of the Elegy had remained in him untarnished by an interval of nearer fifty than forty years, there never came to his Lordship's mind, even in the blackest periods of insomnia, paragraphs from Halsbury about detinue or larceny. Mr. Justice Slade opposed the motion which, he said, suggested that poetry was of more use than law to the community. By 164 votes to 38 the motion was carried."

"Similia Similibus Curantur"

by ALFRED MORRISON
Of the Angola, New York Bar
Editor, Justice Court Topics

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Reprinted from Justice Court Topics, October, 1951

THE Judge did not believe in invoking the law in his own behalf, even if he was sworn to uphold it. He had a theory that petty cases could be held to a minimum, if people would use a little ingenuity.

Whether his theory was sound or not, it must be conceded that annoying situations often yielded promptly to applications of it. The Widow Hopper, for example, was wont to impose her stubborn will on her neighbors. In the fine spring weather, she allowed her chickens to roam at will over their gardens, and feed upon the succulent shoots of early vegetables. Some of the neighbors protected their early plantings with chicken wire, rather than go to war with her. But the Judge had a better idea. A small building near his garden, with a history which antedated modern bathroom facilities, now housed his garden tools. He simply left the door of this building ajar, and each afternoon was observed by the nosey Widow Hopper to enter it, and a moment later emerge, carefully carrying three or four eggs to his kitchen door. That ended the chicken nuisance.

His neighbor on the other side, a lonely old chap who patiently waited for his own demise year after year, had finally gone the way of all flesh and the house was sold to a gay young couple who were childless. The houses were very close together for a country village, and this fact, which had seldom annoyed the Judge's family before, now became a major nuisance. Once or twice each week, from late evening until the small hours of the morning, conviviality boomed forth from the house next door. Although the Judge's wife was accustomed to hearing his honor arise in the night to answer the telephone, and return to dress quietly and leave for the courtroom, she found it difficult to sleep through the whoopee that blossomed forth next door, to reach its climax at about three in the morning.

The Judge was in the uncomfortable position of being the only active justice in his town and village. Besides he had a horror of being the complainant in a criminal action, particularly before any justice of an adjoining town, all of whom were his personal friends.

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courtroom by the State Police, he noted with regret that the hilarity next door appeared to have reached a new high. Not only was the crowd of young people larger than usual; it was also noisier. Some of the language he heard was not used in polite society.

His stay at the courthouse was a short one. It was a drunken driver, who had to be arraigned, instructed as to his rights, and committed to the county jail to await rearraignment the following day. In anticipation of the usual claim that the Judge had failed to instruct him properly, he had turned on his electrical recorder when the defendant was brought before him, and after announcing the title of the case and the names of those present, proceeded to read the charge and the instructions distinctly. Incidentally, the instrument also picked up the defendant's maudlin interruptions.

When the defendant was led away, the Judge's face took on a determined expression. He removed the record, and put in a clean one. He put the recorder in its case, and carried it to his car. A few minutes later, the recorder was busy again, this time attached to an extension cord that allowed the instrument to stand on the window sill of the house next door. It remained there for an hour, while the Judge waited patiently as it recorded the grand finale of the party.

Twenty-three hours later, to wit, at two o'clock in the morning of the day following, his young neighbors were catching up on their sleep. The Judge placed the recorder on his own windowsill, facing the house next door, and opened the window. He turned the machine to its loudest volume, and for one hour it faithfully broadcast the proceedings at the party of the night before.

The performance was brief, but adequate. It effected a complete cure.

Cross-Examination

An automobile theft case was going on. Said the lawyer to the car owner, "Are you sure this is the man who stole your car?"

The witness replied, "I was, until your cross-examination. Now I'm not sure that I ever owned a car."—*Sunshine Magazine.*

Red Tape

Although the Civil Service is usually given the credit for the invention of red tape, some claim may be put forward by the legal profession. The first example of its use given by the *Oxford English Dictionary* is a Maryland statute of 1696 entitled "An Act for Keeping good Rules and Orders in the Port of Annapolis", which provided, *inter alia,* for plans of parcels of land to be sealed with the Great Seal and bound with Red Tape. The second example is from Sir Walter Scott's *Waverly* where the Baillie has a number of legal documents tied with red tape.—*Lex (Canada).*

A Dying Confession

by TOM Q. ELLIS

Clerk, Mississippi Supreme Court

Reprinted from the Mississippi Law Journal, May, 1950

A young man fired with pep and zeal approached his doting Paw,
And said "Above all other things, I wish I knew the Law."
So Law it was, he entered school and wafted like a breeze
To topmost heights where he was crowned with all the Law Degrees.
And then he hung his shingle out and folks from far and near
Came rushing in to learn the Law from one who had no peer.
And soon he mounted to the Bench—the highest in the Land,—
And there as Judge and Counsellor dispensed blind Justice grand.
For years and years his word was Law, his reputation grew,
And none would dare to challenge him about the Law he knew.
But Father Time must take his toll, when years have quickly sped,
And so this Judge and Counsellor came down to his last bed.
His breathing gasps came quick and short, his life was ebbing fast,
And many gathered 'round to hear some wise words as his last.
They huddled close and bended low—and listened, jaw to jaw,
But shocked they were when he confessed, "I wish I knew the Law!"

Practice in Groups

by JOSEPH H. HINSHAW
of the Chicago Bar
President of the Illinois State Bar Association

Reprinted from the Illinois Bar Journal, September, 1951

WITH a few exceptions, the day of the lone eagle in law practice is fast fading away for practitioners determined to render substantial service to their clients, and desiring more than a bare living.

Two or more men working in a law office can accomplish more than twice what either of them can accomplish alone. No one can know all the law, and even if he did, he would not, alone, be able to read fast enough to keep up with the changes in more than one field.

Occasionally a client has the notion that any lawyer can inform him on any legal subject, but the majority of persons who have worthwhile law business are quite aware of the fact that this is not true. The client with law business is looking for a specialist in the subject matter of his legal problems, just as he is looking for a medical specialist to diagnose or treat a specific physical ailment. The client may know you and have a legal problem, but unless he knows that you are expert in the field of his problem, he will not call upon you. If he has confidence in you and believes that your partner or associate is skilled in the field, he will bring the problem to you and your associate's skill. If you have enough partners or associates to cover the major fields of law, each can draw clients that otherwise would not come to him.

A cooperating group can render better service to the client. No one person's mind can see all sides of a proposition. He is likely to continue to look at it from one angle only. A group conference, by lawyers having a common interest in solving a problem, will bring out a surprising amount of information in a very short time. Try it by calling several lawyers into a room, closing the door and stating the proposition. See how the ideas of one will stimulate the thinking of another. It is like asking many men to lift a heavy weight. One who works with true partners or devoted associates always has present additional latent thought power to turn on any troublesome subject when a solution is needed in a hurry. No one should be timid about admitting that he does not know the answer to a question, and he will profit if he is ready and willing to check

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his conclusions with those of his associates, and just as ready to share information.

One may differ in politics or religion with his partner or associate, but that should not prevent full cooperation. It probably will smooth out many a rough road. Often the solution of a problem depends upon knowing someone who can or is willing to furnish information. Each of four partners has four times the opportunity to learn the source of the information and to secure it than if he practiced alone.

There are, of course, communities where the law practice will not support more than one. The lawyer in such a position is often a natural individualist who seems to enjoy his comparative isolation. Nevertheless, he will find it profitable to associate himself in some agreeable, but definite manner with a group in the nearest large community.

In almost every way, one of a group has greater security. If he becomes ill or goes on a vacation, his income can be maintained almost intact. His income is more dependable and more steady, not a feast this month and a famine the next. The tension arising from sole responsibility, or worry over what would happen to his family as a result of even a short disability, is relieved. Usually he can do that part of the work which he likes best. He has greater freedom and more leisure.

Joint expenses are less per capita. One receptionist who is alert, neat, pleasant and courteous, with a certain amount of charm and a good memory for names, can serve as a greeter for all. The best stenographer may not possess these particular qualifications. A common reception room, a common library, and many of the now necessary legal services can be maintained on a scale which would be prohibitive if borne alone. These and other joint expense items will allow for larger individual net earnings.

Such advantages, of course, cannot be had without some sacrifice, some giving in. Becoming a law partner is the next thing to getting married. One has to live with partners and associates many hours a day. He will have to listen to the same stale jokes, and watch the partner repeat the same mistakes, probably at his expense. He will expect the others to overlook his mistakes. He must be prepared to ignore petty things, and not spend valuable time watching the other fellow. He should know all about the partner and like him just the same.

Once a lawyer becomes accustomed to cooperating, giving and receiving help, he becomes healthier, wealthier and wiser.

Domestic Relations

The lawyer, talking to a divorce-seeking wife, asked, "How long have your relations been unpleasant?" She answered, "My relations have always been as nice as pie—it's his who have caused all the trouble."—*Conveyor*, Australia.

The Preparation of Questioned Document Cases

by LOUIS A WATERS*

Reprinted from the New York State Bar Association Bulletin, April, 1950

IN ANY questioned document case involving signatures or handwriting, one of the first steps is to secure authentic signatures or specimens of genuine handwriting to use as standards of comparison. It is necessary that such standards shall be capable of being proved to be genuine to the satisfaction of the Court; that they shall have been written on or about the same date as the questioned writing; that they shall be of similar character to the writing with which comparison is to be made. This last means that writing in ink should be compared with other writing also in ink; pencil script compared with pencil; signatures should be used to match signatures and writings in the body of an instrument must be matched against other writing in similar papers. Such writing should never be compared with signatures, since these are often of a specialized style that is not much like the writer's ordinary script.

Writing done in a limited space, as in filling in an application blank, should be compared with other script also limited by ruled spaces. Never should writing prepared after the matter has come to an attorney be employed as a standard of comparison.

The importance of being able to prove the authenticity of writings chosen for use as standard of comparison cannot be overemphasized. It has been held that where an expert has given an opinion which was in part based on writings which later were excluded from evidence, his opinion should be disregarded, since he has presumably been in part influenced by such writings.

It is important to know the circumstances which are alleged to surround the writing or signing of a questioned document. If it is to be claimed that the document was signed by a person who was propped up in a sick bed, or sitting in the seat of a moving automobile, such allegations should be discovered and passed on to the expert in order that he may be in a position to state that he has considered the possible effect of such unusual conditions on the characteristics of the questioned writing. If the parties offering the questioned instrument will not disclose such information, an examination before trial should be secured in sufficient time to discover these allegations and inform the expert.

In all questioned document cases

*Mr. Waters is recognized throughout the State of New York as consultant document examiner and handwriting expert.

the expert should be afforded the opportunity of examining the original instruments. In cases where it is desired to secure an opinion prior to going deeply into the case, it is sometimes possible to submit good photographs to the expert. Photostats are *not* satisfactory for the purpose of handwriting examination. A good photograph for use in this work must show all the variations in shade and form in the ink-lines and also the texture of the paper. The usual commercial photographer does not supply satisfactory photos for expert-study unless he receives instruction and samples from the expert himself.

A mistake sometimes made by attorneys in document cases is to postpone a consultation with an expert until just before the case is to be reached for trial. Competent experts are likely to be already committed to other cases which will not allow them to assume a new matter on short notice; also the proper presentation of a document case usually requires careful photographic enlargements in order that the reasons which the expert gives for his opinions may be fully understood by the court and jury.

In this connection it should be noted that the New York Court of Appeals has held that the weight which shall be given to the opinion of an expert shall depend on the reasons which he gives for his opinion. Photographic enlargements not only make this clearer, but they also become part of the record.

The writer believes that every year there are many fraudulent claims allowed against estates because of forged instruments which are not sufficiently scrutinized by the attorneys for the estates. If there are any suspicious circumstances surrounding a claim, a handwriting examiner, with his knowledge of the methods of fingers, his files of paper watermarks and typewriter identifications, the ultra-violet light and the chemical tests, may be able to save an estate a sum of money far in excess of the cost of his services.

Candid Comment

About the only person going easy on the taxpayer's money these days is the taxpayer.—*Tax Topics.*

Nonlegal Definitions

An income: A sum of money it costs you more to live than.—*Chicago Sun-Times.*

Liberty: The right to elect people to make restrictions for you.—*Dublin Opinion.*

Money: What the mint makes first and what we all try to make last.—*Outdoor Ind.*

Public Opinion: What people think people are thinking.—*Evening Herald.*

Inflation: Something you suddenly don't have when the tire on your car blows out.—*Milwaukee Journal Magazine.*

Among the New Decisions

Attorney — *purchase of client's property at judicial sale.* In Gaffney v. Harmon, 405 Ill 273, 90 NE2d 785, 20 ALR2d 1273, real estate in the name of the defendant-attorney was sought by his client to be declared held in trust for the client. The client's previous life estate in the property had been sold at an execution sale, and, after expiration of his twelve-month period for redemption but before expiration of the fifteen-month period for redemption by a judgment creditor, he entered into an agreement with the attorney under which the client executed a note for sums due the attorney and for additional fees with the understanding that judgment would be taken thereon by the attorney who as judgment creditor would redeem the property, and convey it to the client upon reimbursement. Subsequently the property was sold for unpaid taxes and the purchaser at the tax sale assigned his title to the attorney. Profits realized from the property were sufficient to pay the attorney's fees and his expenditures, including the amounts paid for redemption and the tax title.

A decree declaring the existence of a trust and ordering an accounting of rents and profits was affirmed by the Supreme Court of Illinois, in an opinion by Justice Gunn, which, referring to the fiduciary relationship between an attorney and client, held that the attorney was subject to the burden of showing the fairness, adequacy, and equity of the transaction whereby he acquired interests adverse to the client; that the attorney could not profit from the transaction by terminating the attorney-client relation; and that a tax title purchased by a trustee with the proceeds of the land was held for the benefit of the cestui que trust.

The extensive appended annotation in 20 ALR2d 1280 discusses "Duties, rights, and remedies between attorney and client where attorney purchases property of client at or through tax, execution, or judicial sale."

Automobiles — *injury to livestock or fowl.* Damages for the loss of a cow killed on a public highway by an automobile driven by the defendant was sought in Round v. Burns, — RI

—, 74 A2d 861, 20 ALR2d 1048, an action of trespass on the case. It appeared in evidence that the cow had escaped from the barnyard and jumped or galloped on the highway where it was almost instantly struck by the car. The accident took place on a portion of the highway marked by "cattle crossing" signs.

Exceptions to the trial court's decision for the plaintiff were sustained by the Supreme Court of Rhode Island, in an opinion by Justice Condon, which distinguished the situation where a motorist fails to exercise due care commensurate with the circumstances created by a fog and blindly drives his car into an animal obscured thereby, and held that the sole proximate cause of the death of the cow was its unexpected appearance in front of the car and not the negligence of the driver, who, in view of the emergency confronting him, was not liable for the loss.

The appended annotation in 20 ALR 2d 1053 discusses the question of the liability of the driver or owner of a motor vehicle for killing or injuring livestock or fowl on the highway, and supersedes an earlier annotation on the same subject.

Automobiles — *injury to occupant after alighting.* A newspaper delivery boy was injured while being driven around his route by the newspaper manager in inclement weather. The injury occurred when, after having alighted from the manager's car, he was struck by a passing car in crossing the highway. An action was brought by the injured boy against the newspaper company in Chatterton v. Pocatello Post, 70 Idaho 480, 223 P2d 389, 20 ALR2d 783. The manager was alleged to have been negligent in stopping the car on the right-hand side of the road instead of on the side where the delivery was to be made, in not parking the car off the oiled portion of the highway, and in not warning the boy of the danger in crossing the highway.

These contentions were rejected by the Supreme Court of Idaho, in an opinion by Justice Keeton. Although apparently the court thought that the manager's acts did not constitute negligence, the principal ground for the decision was that, even if negligence was shown, it was not the proximate cause of the injury. Further, the court thought that the boy was capable of, and had in fact been guilty of, contributory negligence.

The "Liability of driver of private automobile for injury to occupant struck by another vehicle after alighting" is discussed in the appended annotation in 20 ALR2d 789.

Blasting — *property damage from concussion.* Reynolds v. W. H. Hinman Co., — Me —, 75 A2d 802, 20 ALR2d 1360, was an action for damage to a house through concussion and vibration caused by blasting operations on a nearby highway. There were three counts in the declaration: the first based on the theory of absolute liability, and the other two on the theory of negligence. There was

special demurrer, which raised the issue of the sufficiency of the declaration. The second and third counts were held insufficient to allege a cause of action for negligence. This left for decision the principal issue in the case; namely, whether there is an absolute liability for damage by blasting, regardless of fault.

The Maine Supreme Judicial Court, after an extended review of the leading authorities and writers on the subject, and of previous decisions by the Maine court, held, in an opinion by Justice Nulty, that there was no absolute liability for damage by blasting, pointing out that, under modern conditions, blasting is a necessary and useful art, and a reasonable use of property, when done under proper conditions without negligence.

The subject discussed in the extensive appended annotation in 20 ALR2d 1372 is "Liability for property damage by concussion from blasting."

Bribery — *evidence of other bribes.* The defendant, a public officer, was charged in People v. Johnston, 328 Mich 213, 43 NW2d 334, 20 ALR2d 1001, with the acceptance of a bribe to influence the performance of his duties. A bill of particulars filed by the prosecuting attorney gave notice that he would offer evidence to show, in addition to proof of the specific payment on which the information was based, the acceptance of earlier and subsequent bribes. Such evidence had been introduced in an earlier prosecution for conspiracy as to bribes given to influence official action, of which defendant was acquitted. A corrupt intention was specifically made an element of the crime of bribery by statute, and another statute authorized proof of criminal acts of a defendant other than the act charged to show his motive, intent, scheme, plan, or system where material.

An order striking the bill of particulars from the record was reversed by the Supreme Court of Michigan, in an opinion by Justice Carr, which held that the corrupt intent could be proved by a definite and continued course of conduct, plan, or system of which the specific act charged was a part; that, for such purpose, evidence of the acceptance of earlier and subsequent bribes was admissible; and that its admission was not precluded by its receipt in evidence in the prior prosecution for conspiracy.

The "Admissibility, in prosecution for bribery or accepting bribes, of evidence tending to show the commission of other bribery or acceptance of bribe" is the subject of the appended annotation in 20 ALR2d 1012.

Carriers — *time limitation on passenger's action for personal injuries.* Damages for personal injuries resulting from the derailment of a railroad car was sought in Williams v. Illinois Central Railroad Co., 360 Mo 501, 229 SW2d 1, 20 ALR2d 322, by a passenger against the carrier. The plaintiff had purchased a ticket for a round trip from Missouri to Louisiana. The accident occurred in the latter state, a

statute of which was contended by defendant to extinguish causes of action ex delicto not sued upon within one year. The petition in the action, brought in Missouri after the expiration of such period, contained allegations sounding both in tort and upon contract; the answer construed the petition as one in tort and set up the Louisiana statute; the reply clarified the nature of the cause as one founded upon contract.

Judgment for the defendant notwithstanding a verdict for the plaintiff was reversed, conditioned upon the filing of a remittitur by plaintiff, by the Supreme Court of Missouri, Division No. 1, in an opinion by Commissioner Lozier, adopted by the court. It was held that plaintiff was entitled to sue either upon the contract or in tort; that determination of the cause was ordinarily based upon construction of the complaint; that the petition sounding both in tort and upon contract would ordinarily be construed as stating a tort action, but the answer of the defendant, creating the issue as to construction of the petition, entitled the plaintiff in his reply to clarify the nature of the cause; and that the Louisiana statute was not applicable to the plaintiff's contractual cause.

"Action by passenger against carrier for personal injuries as based on contract or on tort, with respect to application of statutes of limitation" is the subject of the appended annotation in 20 ALR2d 331.

Church or Religious Society – *suspension or expulsion from, and*

"I'm worried . . . the boss hasn't yelled at me in 20 minutes!"

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remedies therefor. The plaintiffs, in Mount Olive Primitive Baptist Church v. Patrick, 252 Ala 672, 42 So2d 617, 20 ALR2d 417, having without notice been ousted from membership and office in a church, an unincorporated association, sought in the instant action against the officers and pastor of the church reinstatement and restoration to them of church property. It appeared that for some offenses expulsion of a member without notice was authorized; it did not appear whether the offenses of the plaintiffs were of that character.

Dismissal of the bill was affirmed by the Supreme Court of Alabama, in an opinion by Justice Simpson, which referred to the established rule that courts will not intervene to settle a dispute regarding the right of church membership, and held that the matters complained of were not of that character which allowed court intervention.

An exhaustive discussion of "Suspension or expulsion from church or religious society and the remedies therefor" will be found in the extensive appended annotation in 20 ALR2d 421.

Damages for Breach of Sale Contract — *availability of goods at market price.* Buyer v. Mercury Technical Cloth & Felt Corp., 301 NY 74, 92 NE2d 896, 20 ALR2d 815, was an action by a buyer for damages for the seller's failure to deliver, based on a statute making the measure of damages the difference between the contract price and the market price "where there is an available market." The OPA ceiling price was relied on by the plaintiff as evidence of the market price, but he did not show that a market was available. The defendant's evidence tended to show that there was no such market available. In its instructions to the jury on the meaning of the statute, the trial court apparently thought that "available market" meant a market for resale by the buyer, rather than a market for the purchase of similar goods by him.

The New York Court of Appeals, in an opinion by Justice Froessel, held that the trial court's interpretation of the statute was erroneous. It was held that under the statute the buyer must show, not only the market price, but that there is actually a market in which the goods are available. A mere showing of the OPA ceiling price was held insufficient for this purpose.

The appended annotation in 20 ALR 2d 819 discusses "Necessity that buyer relying on market price as measure of damages for seller's breach of sale contract, show that goods in question were available for market at price shown."

Default Judgment — *vacation of.* Service of process in Townsend v. Carolina Coach Co., 231 NC 81, 56 SE2d 39, 20 ALR2d 1174, an action against a corporate bus line, was made pursuant to a statute authorizing service by delivery of the summons to a local agent defined in the statute as including any person receiving or collecting money in the state for the corporation. The statutory agent to whom the summons was delivered was not an officer

of, and had no contractual relationship with, the corporation but was an employee of operators of a bus station who sold tickets for the defendant and other bus lines using the facilities of the station. The statutory agent neglected to notify the defendant of the service of process.

A ruling setting aside the judgment and permitting defendant to file an answer was affirmed by the Supreme Court of North Carolina, in an opinion by Justice Denny, which, distinguishing between an officer or agent representing a corporation through his official or contractual status and one who is an agent by operation of law, held that the neglect of the statutory agent could not be imputed to the defendant so as to bar relief by the lower court under a statute authorizing the judge, in his discretion, to relieve a party from a judgment taken against him through his mistake, inadvertence, surprise, or excusable neglect.

The appended annotation in 20 ALR 2d 1179 discusses "Setting aside default judgment for failure of statutory agent on whom process was served to notify defendant."

Dentistry Office — *unlicensed operation.* An injunction against the practice of dentistry by the unlicensed defendants and against aiding and abetting them by the licensed defendant was sought in State v. Boren, 36 Wash2d 522, 219 P2d 566, 20 ALR2d 798, by the state and certain interveners. A statute prohibited the practice of dentistry without a license and provided that "a person practices dentistry . . . who owns, maintains or operates an office for the practice of dentistry." The unlicensed and licensed defendants entered into an arrangement under which dentistry equipment purchased by the unlicensed defendants for $13,782 was sold to the licensed defendant for $55,000 under a conditional sales contract calling for payments of $750 a month; the actual dentistry treatments were performed by the licensed defendant who drew a salary of $500 a month, and the same salary plus bonuses varying with the income of the business was paid to one of the unlicensed defendants for services as business manager.

A judgment dismissing the case was reversed by the Supreme Court of Washington, in banc, in an opinion by Justice Schwellenbach, which ruled the activities of the unlicensed defendants to come clearly within the statutory definition of the practice of dentistry and, expressly overruling earlier authority to the contrary, held the statute to be a reasonable exercise of the police power.

The "Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining, or operating an office therefor" is discussed in the appended annotation in 20 ALR2d 808.

Divorce Decree — *as res judicata as to previous marital status.* Rediker v. Rediker, 35 Cal2d 796, 221 P2d 1, 20 ALR2d 1152, was an action by a

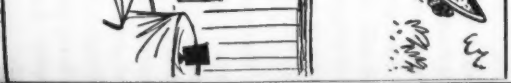
wife for separate maintenance, in which the husband cross-complained for an annulment of the marriage. The husband had been married before, and had lived with his first wife in Cuba. He had obtained a divorce there, after his first wife had returned to the United States. He then married the second wife. Later he moved to California, where the second wife brought the present action. In the meantime, the first wife had obtained a divorce in Florida.

To show the invalidity of the second marriage, the husband relied on: (1) the validity of the Florida decree, and (2) the invalidity of the Cuban decree. Both contentions were rejected.

The Florida decree was relied on as res judicata, not as to the dissolution of the marriage, but as to the existence at that time of a valid and undissolved marital status, or, in other words, as an adjudication in effect that, the parties being then married, the previous Cuban decree was invalid. The California Supreme Court, in an opinion by Justice Traynor, held, however, that the res judicata effect of the Florida decree could not be carried this far as against persons, such as the second wife, who were not parties to that proceeding. Refusal to give the Florida decree this extended effect was held not to be a denial of full faith and credit.

The Cuban decree, rendered at the husband's domicile, was held to be valid, though based wholly on constructive service. But, even if it were in-

"I've never known such a name dropper. She's divorced four husbands."



valid, the court was of the opinion that the husband, having himself obtained the decree, was estopped to assert its invalidity.

The subject of the appended annotation in 20 ALR2d 1163 is "Divorce decree as res judicata or estoppel as to previous marital status, against or in favor of third persons."

Firearms, Explosives, Etc. — *liability for sale to child.* A nine-year-old boy, severely burned while lighting a bulrush dipped in gasoline sought, in Yachuk v. Oliver Blais Co., (1949) AC 386, (1949) 2 All Eng 1950, 20 ALR2d 111, an instant action by his father in his own behalf and as next friend of the infant, to recover damages from the defendant whose agent had sold a pint of the highly inflammable substance to the boy, who had no knowledge of the peculiarly dangerous character of gasoline. The boy, accompanied by his younger brother, had told the agent the false story that he wanted the gasoline for his mother's car which was stuck down the street.

On appeal by plaintiffs to His Majesty in Council, and cross appeal by the defendant, from a judgment for the plaintiffs for one-fourth of the amount of damages suffered, reduced to such sum under the Negligence Act because of the contributory negligence of the boy, the charge of negligence of the defendant in selling the highly inflammable substance to the boy was sustained by the English House of Lords, particularly in view of the concurrent findings with respect thereto by the trial and appellate courts below. The acts of the infant plaintiff, on the other hand, were held to constitute neither an intervening cause nor contributory negligence.

The extensive appended annotation in 20 ALR2d 119 is entitled "Liability of seller of firearm, explosive, or highly inflammable substance to child."

Income Tax Deductions — *expenses incurred from liability for tort, crime, etc.* National Brass Works v. Commissioner, 182 F2d 526, 20 ALR 2d 590, was an income tax deficiency redetermination proceedings which involved the question of the deductibility, as a business expense, of a payment made by the taxpayer to the government in settlement of the latter's claim for admitted violation of the Price Control Act. The overcharges had been discovered after official investigation. The settlement was made before the institution of proceedings to impose civil damages. The applicable statutory provision permitted the deduction of "all the ordinary and necessary expenses paid or incurred . . . in carrying on any trade or business . . . . ."

A decision of the Tax Court approving the Commissioner of Internal Revenue's disallowance of the deduction was reversed by the Ninth Circuit, in an opinion by Circuit Judge Stephens which, referring to the highly complex nature of the Price Control Act and the not uncommon innocent violations thereof, held that the question whether the payment to the government was

deductible as an "ordinary and necessary" expense depended, not upon a characterization of the obligation as "penal" or "remedial" but upon whether the overcharge was made innocently, unintentionally, and without an unreasonable lack of care, for determination of which the case was remanded.

The extensive appended annotation in 20 ALR2d 600, entitled "Income tax: deductibility of amount paid or expense incurred by taxpayer on account of his liability or alleged liability for tort, crime, or statutory violation" supplements an earlier annotation on the point.

Injury to Customer — *from fall of goods, etc.* Motte v. First National Stores, — RI —, 70 A2d 822, 20 ALR 2d 88, was an action by a child and her father for damages for an injury to the child in a grocery store by the fall of butter stacked on a dolly. The only witnesses were the child's mother and a store employee, and their testimony was directly in conflict. Although previously the child's conduct had been perfectly normal, after the accident she became subject to fits of crying and temper, accompanied sometimes by violence, and other manifestations of abnormal behavior. She was under the constant treatment of physicians for over six years, including a neurologist and a psychiatrist. The trial resulted in a verdict of $15,000 for the child and $2,500 for her father. Upon the filing of remittiturs, these amounts were reduced to $6,000 and $1,200 respectively.

On exceptions the principal holdings of the Rhode Island Supreme Court were: (1) the case was a proper one for the application of the doctrine of res ipsa loquitur, (2) the presumption arising therefrom was not rebutted by the mere introduction of credible evidence by the defendant, (3) the defendant, having gone to trial, could not afterwards raise the question of the plaintiff's failure to allege that she did not know nor had the means of knowing the cause of the accident, (4) there was no prejudicial error in basing the medical testimony on history furnished by the child's mother, and (5) there was no error in the denial of an unconditional new trial, since the evidence was directly conflicting and the credibility of the witnesses was for the trial court. The amount of the verdict, after remittitur, was held not to be excessive. The opinion was written by Justice Capotosto.

An exhaustive discussion of "Liability for injury to customer or other invitee in store by falling of displayed, stored, or piled objects" is contained in the appended annotation in 20 ALR2d 95.

Injury to Customer — *from pushing, crowding, etc.* The plaintiff in Smith v. Kroger Grocery & Baking Co., 339 Ill App 501, 90 NE2d 500, 20 ALR2d 1, was injured by a rush of customers in a store to buy oleomargarine, which was in short supply. The store manager had set the box of oleomargarine in a narrow aisle near the plaintiff and announced in a loud voice,

"Oleo, come and get it." The ensuing rush threw the plaintiff against something, and she suffered a severe muscle spasm in her neck. There was a verdict in favor of the plaintiff for $20,000.

The Illinois Appellate Court, in an opinion by Justice Culbertson, upheld the verdict, holding that the act of manager was negligent under the circumstances, and that this negligence was the proximate cause of the injury. The verdict was held not to be excessive.

The extensive appended annotation in 20 ALR2d 8 contains an exhaustive discussion of "Liability of proprietor for injury to customer or patron caused by pushing, crowding, etc., of other patrons."

Leased Premises — *advertising rights.* The use of an outside wall of leased premises for an advertising sign was sought to be enjoined in Lambros Metals v. Tannous, 71 Ariz 53, 223 P2d 570, 20 ALR2d 933, by the landlord against the tenant. The leased premises consisted of the basement of a two-story building. The sign, designating the place and nature of the business operated by the tenant in the basement, was displayed in a reasonable manner above a door to a vestibule making accessible stairways leading to the basement and the second story. Use of the premises for the business was entirely dependent upon public patronage and the landlord had been advised of its nature before execution of the written lease. The lease contained no provi-

"Offhand, I'd say that the decision of the jury wasn't unanimous!"

sions as to the use of any part of the premises for signs or advertising.

Judgment for the tenant, entered upon ordering the complaint dismissed, was affirmed by the Supreme Court of Arizona, in an opinion by Patterson, S. J., which held that parol evidence was improperly admitted to show conversations between the parties, antecedent and subsequent to the execution of the lease, purported to authorize the signs; but that such error was not prejudicial in view of evidence properly admitted solely for the purpose of establishing what was reasonably necessary for proper enjoyment of the demised premises; and that, under the circumstances shown by such evidence, the tenant had an implied right, appurtenant to the premises, to display the sign in a reasonable manner.

The appended annotation in 20 ALR 2d 940, supplementing an earlier annotation on the same subject, deals with the right of a tenant to advertise on the premises occupied by him, and correlatively, with the right of the tenant to exclude other advertising from the premises, whether by the landlord or persons claiming under him, or by tenants of other parts of the building.

Medical, Hospital, Etc., Costs — *evidence of payment by other party.* A bicyclist injured in a collision with the right side of a bus making a right turn at an intersection brought the instant action against the bus company and the driver. The factual theory of the declaration was supported by some evidence, but there was also substantial evidence to show due care on the part of the driver and negligence of the plaintiff. After the accident, the defendant bus company sent a doctor to attend plaintiff and paid certain medical and hospital expenses incident to plaintiff's treatment. During the trial, one of the jurors rode on a bus and communicated to the other jurors the policy of its driver as to stopping at an intersection, entirely different from that involved in the case, before making a right turn.

A judgment entered on a verdict for the defendants was affirmed in Meegal v. Memphis Street Railway Co., 33 Tenn App 247, 238 SW2d 519, 20 ALR2d 286, by the Court of Appeals of Tennessee, in an opinion by Presiding Justice Anderson, which, emphasizing the necessity of adopting a rule that would be consistent with the sound policy of permitting assistance to an injured party without thereby creating evidence of fault, as well as the inadmissibility of a layman's conclusion of law, or at least of mixed law and fact, as to his negligence, held that defendants' special request to the effect that payment of the medical and hospital bills should not be considered an admission of liability embodied a correct statement of the law applicable to the facts of the case. Additional rulings held the evidence sufficient to justify the verdict and the extraneous communication not to constitute reversible error.

The "Admissibility of evidence to show payment, or offer or promise of

payment, of medical, hospital, and similar expenses of an injured party by the opposing party" is discussed in the appended annotation in 20 ALR2d 291.

Negligence Action — *evidence of payment of similar claims by defendant.* In McEntire v. Baygent, (Tex Civ App) 229 SW2d 866, 20 ALR2d 300, an action to recover damages for injuries incurred by plaintiff while a passenger in defendant's bus, the question of the bus driver's negligence was sharply controverted. Plaintiff's offer at the trial of evidence to show that the defendant had paid claims of other passengers injured in the same accident was refused.

Judgment rendered on a verdict for the defendant was reversed by the Court of Civil Appeals of Texas, in an opinion by Justice McGill, which held the evidence to be admissible as an admission of liability, and the rejection thereof to constitute reversible error.

The title of the extensive appended annotation in 20 ALR2d 304 is "Admissibility of evidence that defendant in negligence action has paid third persons on claims arising from the same transaction or incident as plaintiff's claim."

Nonresident Criminal Defendant — *immunity from service of process.* A defendant residing outside the county, against whom a civil action had been commenced about twelve days before, was arrested on a warrant issued on the information of the plaintiff in the civil action, and was brought within the county. Both the civil and criminal actions grew out of the same facts and circumstances. A few moments after being freed on bail, the defendant was served with process in the civil action. Objection was made on the ground that the defendant was immune from service at the time.

The Pennsylvania Supreme Court, in Crusco v. Strunk Steel Co., 365 Pa 326, 74 A2d 142, 20 ALR2d 160, held (1) that the defendant was not immune from service merely because of his status as a criminal defendant, but (2) that under the circumstances of this particular case there was a presumption of fraud in using the criminal process to get the defendant within the jurisdiction, and that therefore the service would be set aside. Chief Justice Drew wrote the opinion.

The title of the appended annotation in 20 ALR2d 163 is "Immunity of nonresident defendant in criminal case from service of process."

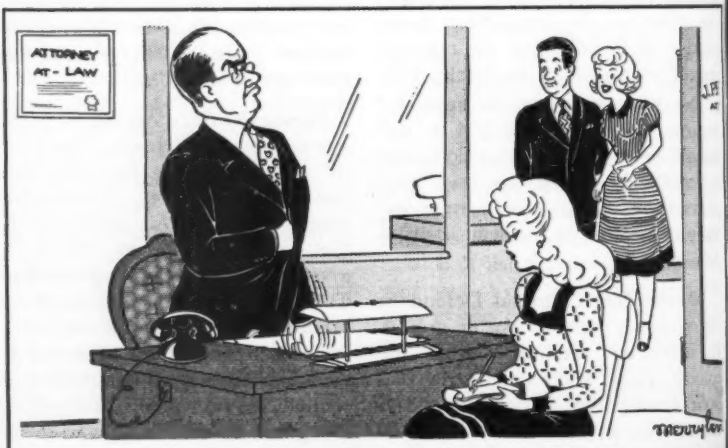
Personal Injury Action — *verdict awarding medical expenses.* The plaintiff, whose leg was fractured when struck by a taxicab of the defendant, sought in Wall v. Van Meter, 311 Ky 198, 223 SW2d 734, 20 ALR2d 272, to recover damages resulting therefrom. The jury's verdict for the plaintiff was limited to the exact sum shown by the evidence to have been expended for medical treatment, notwithstanding uncontradicted evidence of pain and suffering and an instruction as to the inclusion of damages therefor.

A judgment entered on the verdict

was reversed by the Court of Appeals of Kentucky, in an opinion by Chief Justice Sims, which held that the verdict was a severable one, erroneous in so far as it ignored fundamental law given by the court in its instructions on the measure of damages, and that the omission was not a mere irregularity waived by the failure to move to have the jury correct the verdict.

The appended annotation in 20 ALR 2d 276 discusses "Validity of verdict awarding plaintiff in personal injury action amount of medical expenses but failing to award damages for pain and suffering."

Professional Association — *suspension or expulsion from, and remedies therefor.* In Blenko v. Schmeltz, 362 Pa 365, 67 A2d 99, 20 ALR2d 523, the plaintiff, a patent attorney and a member of a voluntary association of patent agents and lawyers, brought the instant suit to enjoin the defendants, members of the board of managers of the association, from exercising power conferred on them by the association to try the plaintiff in expulsion proceedings on charges of professional misconduct. Continuation of a preliminary injunction pending a trial on the merits was sought on the ground that the defendants' animosity, prejudice, and prejudgment of his case prevented a fair hearing of the expulsion proceedings, the adverse determination of which would cause irreparable harm to his professional, social, and civic reputation. The charges of misconduct, based on reports of a patent com-



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missioner, of plaintiff's opposing counsel in the patent proceedings, and of a former associate of plaintiff, were considered at a meeting of defendants held without notice to plaintiff, and resulted in a letter by the defendants to the plaintiff demanding resignation from the association and the bar and threatening disciplinary proceedings in the event of a refusal. Members participating in the board's proceedings included one who originally instituted the charges and was subsequently elected to the board.

An order refusing continuation of the preliminary injunction was reversed, with instructions to restrain defendants until determination of the merits on the final hearing, by the Supreme Court of Pennsylvania, in an opinion by Justice Linn, which held that the plaintiff had a property right in his membership; that a court of equity had jurisdiction to protect such right; that the circumstances disclosed prejudice and prejudgment on the part of the board members; and that such disclosure obviated the necessity of prior exhaustion of remedies within the association.

The extensive appended annotation in 20 ALR2d 531 contains an exhaustive discussion of "Suspension or expulsion from professional association and the remedies therefor."

Public Office — *vacancy or removal.* An injunction against a declaration by defendant county commissioners of the existence of a vacancy in the office of sheriff was sought in Briggs v. Board of County Commissioners, 202 Okla 684, 217 P2d 827, 20 ALR2d 727. That office was held by the plaintiff when he was indicted and convicted of the federal offense of conspiracy to violate laws of the United States by operating a wholesale liquor business in Oklahoma without paying federal taxes thereon. A state statute provided for the vacancy of public office upon conviction of the incumbent for an "infamous" crime.

A judgment denying application for a permanent injunction was affirmed by the Supreme Court of Oklahoma, in an opinion by Vice Chief Justice Arnold, which, declaring it to have been correctly conceded that a felony under the laws of the state is an "infamous" crime, held that, although the selling of liquor, not charged to have been after former conviction, was only a misdemeanor under the prohibitory laws of the state, a conspiracy to commit such misdemeanor was a felony and that conviction of the federal offense was a judicial determination of such conspiracy, so as to effect a vacancy in the public office by operation of the vacancy statute.

The appended annotation in 20 ALR 2d 732 discusses "Conviction of offense under federal law or law of another state or country as vacating accused's holding of state or local office or as ground of removal."

Release of Employer — *duress permitting avoidance.* Wise v. Midtown Motors, 231 Minn 46, 42 NW2d 40, 20 ALR2d 735, was an action brough

by a former employee against his former employer to recover on a quantum meruit for services rendered under an oral contract which had been repudiated by the employer as within the statute of frauds and therefore unenforceable. Avoidance of a release of claims arising from the employment was sought by the employee on the ground of duress. It appeared in evidence that the release, prepared in advance by the defendant, was signed by the plaintiff in the absence of his counsel at the office of the plaintiff's new employer who was co-operating with the former employer and stated to the employee that he would be "through" if the case were not then settled; that the defendant threatened to ruin plaintiff by an action for a huge sum, for abuse of garnishment process in support of which there was no basis in the evidence either that defendant had such a cause of action or that he in good faith believed that he had; and that the employee, because of the prior discharge, threats, and harassments of the defendant, was in such state of mind as to be a likely victim for coercion.

Denial of a motion for a new trial after direction of a verdict for the defendant was reversed by the Supreme Court of Minnesota, in an opinion by Justice Peterson, which held that duress is to be determined by the subjective standard of whether the free will of the victim was overcome thereby, that such duress could, under the circumstances above set forth, consist of the threats as to loss of employment and the bringing of an action, not to recover upon a just claim, but for the purpose of inflicting hardship and oppression; and that the existence of duress sufficient for avoidance of the release was, under the evidence, a question of fact. The former employer was also held, upon express overruling of prior decisions, not to be entitled to have the measure of recovery determined by the void, repudiated contract, which was only admissible in evidence as an admission for whatever evidentiary worth it possessed under the circumstances of the case.

"What constitutes duress rendering employee's release of employer or former employer subject to avoidance" is the subject of the appended annotation in 20 ALR2d 743.

Social Club — *suspension or expulsion from, and remedies therefor.* An injunction to restrain an incorporated nonprofit club and its directors from striking plaintiff's name as a member was sought by a bill of equity in Mitchell v. Jewish Progressive Club, 253 Ala 195, 43 So2d 529, 20 ALR2d 339. A resolution of the club's board of directors had declared that upon failure of the plaintiff to tender his resignation, "the said member stand removed from the club roster and cease to be a member of this organization without any further formality."

A decree overruling a demurrer to the bill was reversed by the Supreme Court of Alabama, in an opinion by Justice Foster, which held that manda-

mus, and not injunction, is the appropriate remedy where the illegal act has been accomplished and the effort is to undo the wrong, as distinguished from the situation where the illegal act is threatened and the purpose is to prevent its accomplishment.

The extensive appended annotation in 20 ALR2d 344 contains an exhaustive discussion of "Suspension or expulsion from social club or similar society and the remedies therefor."

State Corporation Tax — *validity under import-export clause.* A state franchise tax upon a railroad company measured by gross receipts apportioned to length of lines within the state was held by the United States Supreme Court, in Canton Railroad Co. v. Rogan, 340 US 511, 95 L ed 488, 71 S Ct 447, 451, 20 ALR2d 145, in an opinion by Justice Douglas in which six other justices concurred, not to contravene the constitutional prohibition of state taxation of imports or exports when imposed in respect of a railroad's receipts for services in handling imports and exports at its marine terminal, or to violate the commerce clause.

The Chief Justice did not participate in the decision.

Justice Jackson reserved judgment on the ground that the decision involved the question, not briefed or argued, whether such a tax is at variance with the policy evinced by the Federal Constitution of reserving equality of access to the high seas.

The "Validity, under import-export

"Your Honor, the defense rests!"

clause of Federal Constitution, of state tax on corporations" is the subject of the appended annotation in 20 ALR2d 152.

Support of Child—*in military service.* A divorced husband sought in Swenson v. Swenson, — Mo App —, 277 SW2d 103, 20 ALR2d 1409, to quash an execution for the enforcement of a divorce decree provision for payment to the wife of a designated monthly sum for the support of a minor son until his majority. During the period involved, the minor son, having enlisted with the consent of his mother, was a member of the armed forces.

An order overruling the husband's motion to quash the execution was reversed by the Kansas City Court of Appeals, in an opinion by Justice Broaddus, which, distinguishing a case of remarriage not ipso facto dissolving the alimony obligation, held that induction of the son resulted in his emancipation and termination of the husband's legal duty to support the child, so as to afford sufficient ground for quashing the execution, notwithstanding plaintiff-wife's claim that such action would operate as a retroactive modification of the divorce decree.

A "Father's duty under divorce or separation decree to support child as affected by latter's induction into military service" is discussed in the appended annotation in 20 ALR2d 1414.

Unemployment Compensation — *employee's vested rights.* By the proceeding in Hagerty v. Administrator, Unemployment Compensation Act, 13[illegible] Conn 129, 75 A2d 406, 20 ALR2d 960, a discharged employee sought judicial reversal of a decision of an unemployment commissioner denying further benefits under the Unemployment Compensation Act. The commissioner's decision as to further benefits, payable under the terms of the statute existing at the time of the discharge, was based on amendments of the statute as to methods for determining base periods for benefits and conditions of benefit eligibility. The statute, in its original form, expressly reserved the power to amend or repeal and provided that all rights or privileges thereunder shall exist subject to such power.

A judgment dismissing the appeal was upheld by the Supreme Court of Errors of Connecticut, in an opinion by Justice O'Sullivan, which rejected the contention of the applicant that he had a vested property right in benefits under the act as it existed at the time of his discharge and held that the legislative reservation of power to amend or repeal justified as constitutional the application to the applicant of changes as to benefit eligibility.

The "Vested right of applicant for unemployment compensation in mode and manner of computing benefits in effect at time of his discharge or loss of employment" is the subject of the appended annotation in 20 ALR2d 963.

Will Contest — *attorney's fee.* The will involved in Re Dickey, [illegible] Ohio App 255, 94 NE2d 223, 20 ALR2d 1220, and gener[illegible] gift of [illegible] will was [illegible] ended th[illegible] for the [illegible] made in t[illegible] ance for [illegible] penses in [illegible] and the a[illegible] the gener[illegible] ection [illegible] ground th[illegible] been app[illegible] ees and [illegible] the residu[illegible] The [illegible] his to b[illegible] After re[illegible] ions, of [illegible] fictions, [illegible] will, whi[illegible] payable [illegible] an opini[illegible] that the [illegible] been pro[illegible] iduary e[illegible] tioned ar[illegible] efusing [illegible] any disti[illegible] or extrac[illegible] "Attor[illegible] urred b[illegible] uccessfu[illegible] hargeab[illegible] s appo[illegible] the s[illegible] ation i[illegible]

2d 1220, contained numerous specific nd general legacies and devises, with gift of the residue in trust. The will was contested, but successfully de- ended through the efforts of counsel or the executor. Application was made in the probate court for an allow- nce for counsel fees and other ex- enses in the suit. This was granted, nd the allowance was charged against he general assets of the estate. Ob- ection was made to this, on the round that the expenses should have een apportioned among all the lega- ees and devisees, instead of against he residuary estate alone.

The Ohio Court of Appeals found his to be a new question in Ohio. After review of the statutory provi- ions, of authorities from other juris- dictions, and of the provisions of the will, which made debts and expenses payable "from my estate," the court, in an opinion by Justice Wiseman, held that the counsel fees and expenses had been properly charged against the re- iduary estate, and should not be appor- ioned among the legatees and devisees; efusing in this connection to make ny distinction based on the ordinary r extraordinary nature of the expenses.

"Attorney's fees and expenses in- urred by personal representative in uccessful defense of will contest as hargeable to the residuary estate or s apportionable among beneficiaries" s the subject of the appended anno- ation in 20 ALR2d 1226.

Witnesses — *impeachment of.* In Porter v. State, — Okla Crim —, 217 P2d 844, 20 ALR2d 1416, a prosecution for driving an automobile while intoxicated, several witnesses testified as to the intoxication and others as to the absence of intoxication. Over objections of the defendant, the prosecutor was permitted to cross-examine defendant's witnesses continually as to prior arrests and charges of crime not resulting in a conviction. The defendant, who as a witness had also denied his intoxication, was cross-examined as to his drinking on various other occasions.

A judgment of conviction was reversed by the Criminal Court of Appeals of Oklahoma, in an opinion by Presiding Justice Jones, which, although ruling that the cross-examination of defendant as to drinking on other occasions was proper and that the conflicting evidence was sufficient to support the conviction, held that the cross-examination of defendant's witnesses violated his constitutional right to a fair and impartial trial and constituted prejudicial error.

The extensive appended annotation in 20 ALR2d 1421 is a comment note which discusses the general rules and doctrines which have been developed and applied in the cases dealing with the admissibility of evidence to show that a witness has been arrested, imprisoned, or charged with or prosecuted for a criminal offense, or the right to interrogate a witness as to such fact, where no conviction is shown, for the purpose of affecting his credibility.

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